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John Melvin

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EXAMINER

MAUST, TIMOTHY LEWIS

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/711,787
Filing Date: October 05, 2004
Appellant(s): MELVIN ET AL.

Niti Duggal
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 3/24/08 appealing from the Office action mailed 6/4/07.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

Mattiola et al., U.S. Patent 4,881,375 (11-1989).

Niedwiecki et al., U.S. Patent 6,755,225 (06-2004).

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1 and 2 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Mattiola et al. in view of Niedwiecki et al.

The Mattiola et al. reference discloses a system for inspecting, evacuating, vaporizing and compressing a gas such as oxygen into gas cylinders (see Column 4, line 5 to Column 6, line 20), but doesn't disclose the concept of transporting the system to the site of filling. However, the Niedwiecki et al. reference discloses another "mobile gas canister transfilling station" (see Figures 4-6) wherein the system is transported to the site of filling (see disclosure). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the Mattiola et al. system by making it mobile in view of the teachings of the Niedwiecki et al. reference in order to simplify the refilling of gas cylinders or vehicles for the end user by bringing the product to the site of filling.

(10) Response to Argument

In response to the Appellant's argument that Niedwiecki does not teach the use of a vaporizer, or that the vaporizer can be loaded onto the station to make it portable, see the rejection above and the following. The examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, Niedwiecki merely teaches the concept of making a refueling station mobile to supply fuel to an end user at remote locations. Whether or not Niedwiecki teaches the use of a vaporizer is irrelevant, since the base reference, Mattiola, includes a vaporizer and all other claimed structure. In response to the Appellant's argument that it would be impractical to make the Mattiola system mobile because of its automation and vast amounts of equipment, see the following. Niedwiecki not only has a mobilized and automated system but also has vast amounts of equipment placed on a trailer (Refer to Figures 4-6). The equipment includes an electrolyzer, a heat exchanger, a single or dual compressor subsystem, storage tanks, a system controller (microprocessor), vent stacks, sensors, motor drive and piping. Automation would not be lost as shown by the Niedwiecki system being controlled by the microprocessor 400 and the size of the trailer is

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irrelevant, since Niedwiecki teaches the basic concept of mobilizing a fueling system that has a comparable amount of equipment to that of the Mattiola system.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

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